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OLC 79-0204/27

24 May 1979

MEMORANDUM FOR THE RECORD

SUBJECT: Conversation with Mike O'Neill/FY 1980 Intelligence Authorization Bill/Intelligence Community Staff

STATINTL

1. Subsequent to conversation with Director of Finance Ed Sherman and [redacted] of OGC, the undersigned called HPSCI Chief Counsel Mike O'Neill to talk about the changes made from previous wording in Title II of H.R. 3821 as reported out by HPSCI.

2. I told O'Neill that I understood the Committee's reasons for inserting the words "During the fiscal year 1980" in section 201(c), and that this rationale was clearly presented in the accompanying Committee report (see House Report 96-127 Part 1, p. 6). I also noted, however, that additional changes made in the House version of that section were somewhat confusing, potentially troublesome, and not clearly explained in the report. Specifically:

--The Senate version of the Bill (i.e., section 201(c) of S.975) provides that "the activities of" the IC Staff shall be governed by the DCI "in accordance with the provisions of" the National Security Act of 1947 and the CIA Act of 1949. This was the formulation used in the FY 79 Authorization Act.

--The House version, however, provides that "personnel of the Intelligence Community Staff shall be subject to the provisions of [the two Acts] relating to personnel of the Central Intelligence Agency as if they are personnel of the Central Intelligence Agency" (emphasis added).

3. I told O'Neill that use of the personnel modifiers underlined above could be construed as giving the DCI less authority with respect to the IC Staff than exists in current law, i.e., authority over IC Staff personnel only, as opposed to authority over the operation of the IC Staff as an organizational entity. I also noted that the House formulation could be construed as either: (1) making inapplicable to the IC Staff constraints contained in the National Security Act such as those related to domestic police powers and law enforcement functions; or (2) leaving the IC Staff in statutory limbo in connection with anything other than personnel matters, thus impeding the DCI's ability to supply administrative, security or other necessary support.

4. I also noted that use of the words "as if" might be construed as implying that CIA employees detailed to the IC Staff were no longer actually CIA employees.

5. O'Neill said that the changes referred to in paragraph three had been made because it was his impression that the only reason for the original language was to give the DCI authority over IC Staff personnel, and it was, therefore, preferable to be precise. He went on to say, however, that the change had not been intended as an added grant of independent authority to the IC Staff. I said that I thought O'Neill might want to take another look at the problems that conceivably could arise if the House version of section 201(c) were enacted. O'Neill argued that the change referred to in paragraph 4 above was not intended to be interpreted as meaning that detailees from CIA to IC Staff did not continue to be CIA employees.

STATINTL

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